IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

ST.Rev..No. 258 of 2003()

TA.485/2002 of SALES TAX APPELLATE TRIBUNAL,ADDL.BENCH-II, ERNAKULAM
.....

PETITIONER/APPELLANT/ASSESSEE:

M/S. J & G ASSOCIATES,
OLD MARKET, ALUVA, ERNAKULAM DISTRICT,
REP. BY MANAGING PARTNER, JIJI ANTONY.

BY ADV. SRI.T.M.SREEDHARAN
SRI.DEEPAK JOY.K.

RESPONDENT: RESPONDENT/REVENUE:

STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

BY SR.GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & HARUN-UL-RASHID, J.

S.T.Rev. No.258 of 2003

Dated this the 3rd day of August, 2007.

O R D E R

H.L.Dattu, C.J.

A small time dealer is before us in this tax revision petition, being aggrieved by the order passed by the Sales Tax Appellate Tribunal in T.A.No.485 of 2002 dated 28th February, 2003. By the impugned order, the Tribunal has rejected the assessee's appeal.

(2) The assessment year in question is 1999-2000. In its annual returns, the assessee has declared total and taxable turnover in a sum of Rs.28,08,538/- and Rs.5,50,513.70 respectively.

(3) The assessing authority after rejecting the books of accounts had issued a proposal to the assessee, to explain why the check post declarations should not be taken into consideration, for the purpose of computing the best judgment assessment. The assessee has filed its reply. Rejecting the books of accounts filed, the assessing authority has completed the assessment for the assessment year 1999-2000. While doing so, it has quantified the tax liability by adding the actual sales turnover reflected in the check post declaration, and in addition to it, it has added two times the probable omission and suppression. Aggrieved by the best judgment assessment so passed, the assessee was before the first appellate authority in S.T.A.No.695 of 2002. The first appellate authority has modified the order of assessment passed by the assessing authority to the extent of adding only one time the probable omission and suppression to the actual suppression detected in the declaration forms. This order of the appellate authority is confirmed by the Tribunal in the appeal filed by the assessee. Thus, the assessee is before us, in this revision petition filed under

Sec. 41 (1) of the Kerala General Sales Tax Act. The assessee has framed the following questions of law for our consideration and decision. They are as under.

> "Whether on the facts and in the circumstances of the case:-
>
> i) the Appellate Tribunal is justified in sustaining the estimated additions on account of alleged purchases from M/s. R.S.Traders, to the extent of alleged actual purchases and further addition thereto, based on the check post declaration, when the petitioner has denied such purchases?
>
> ii). Is not the addition based on check post declaration illegal and invalid, in the light of the statutory provisions contained under Sec.30 (B) (4) and the denial on the part of the assessee?
>
> Iii). Is the Appellate Tribunal justified in its findings that the check post declarations are public documents which cannot be unbelieved, in the absence of other evidences to prove to negative, in the light of the statutory provisions contained with Sec.30 (B) (4)?
>
> iv). Is the addition made to the declared turnover for 1999-2000, and the findings of the Appellate Tribunal, legal, valid and sustainable in law?

(4) At the time of hearing of this revision petition, the learned counsel for the petitioner, Sri.T.M.Sreedharan would submit that the assessing authority should not have merely relied on the check post declarations, to reject the returns and books of accounts produced by the assessee while computing the tax liability for the assessment year 1999-2000. Apart from this, the learned counsel would submit that the additions made by the assessing authority is excess and in support of that contention he has brought to our notice the observations made by the Division Bench of this court in the case of C.O.Varghese V. State of Kerala (2004 12 KTR 528 (Ker) and Surya Agencies V. State of Kerala (2003 (3) KLT 155 (SN) Case No.201).

(5) Sri.Muhammed Rafiq, the learned counsel appearing for the revenue would submit that the check post declarations are public documents and

reliance on those documents is permissible while computing the tax liability of the assessee registered under the provisions of the Kerala General Sales Tax Act. In support of that submission, the learned counsel has brought to our notice a Division Bench decision of this court in the case of M.S.E.S. Attarwala Vs. State of Kerala (2004 (3) KLT 105). In the said decision the Division Bench has stated that check post declaration is a piece of evidence and the authorities are entitled to place reliance on that material in appropriate cases.

(6) In the instant case, the assessee, for the assessment year had filed his total and taxable turnover. Before completion of the assessment proceedings, the assessing authority had received information from the check post authorities that the assessee has effected inter-State sales of dates, tamarind etc. In view of the report so received, the assessing authority has rejected the return filed by the assessee and has proceeded to complete the best judgment assessment and while doing so, it has taken into consideration the sales turnover estimated under the declarations in a sum of Rs.8,73,600/- and has added two times the probable omission and suppression in a sum of Rs.17,47,200/- and thereafter has quantified the sales tax liability of the petitioner for the assessment year 1999-2000.

(7) The addition made by the assessing authority is modified by the first appellate authority by adding only one time the probable omission and suppression to the sales turnover estimated under the declaration forms obtained by the assessing authority from the check post.

(8) This order passed by the first appellate authority is also sustained by the Tribunal.

(9) Sri.T.M.Sreedharan, the learned counsel for the petitioner would submit that there is no justification for the first appellate authority as well as for the

Tribunal to add one time the probable omission and suppression to the actual suppression detected under the declaration forms. In support of that contention, the learned counsel has relied on the observations made by the Division Bench of this Court in the case of C.O.Varghese V. State of Kerala (2004) 12 KTR 528 (Ker) . In the said decision this court has held as under.

> " But so far as the addition made on the basis of check post declarations are concerned, according to us, there was no justification for making any addition apart from the actual amount covered by the check post declaration on the assumption that assessee might have practiced similar unaccounted transactions also. The check post declarations, it must be noted, came to the notice not on the basis of any inspection by the assessing authority but only after the assessment year was over. If the assessee had transported goods through the check post for other periods also, it could have been brought to light. Certainly, the assessing authority could have called for those declarations from same check post or from other check posts. The assessing authority has no case that the assessee had in fact, transported goods either through the very same check post or through other check post in the State for the other periods. In these circumstances, unlike in the case of additions to be made on the basis of inspection conducted in the business premises during the assessment year both towards actual suppression and towards probable omissions and suppressions of the similar nature, additions towards probable omissions and suppressions, cannot be made with reference to check post declarations. The tribunal, in fact, has found that the addition made is arbitrary and calls for interference. The tribunal has only reduced the addition from six items the value determined on the basis of check post declarations to three times. According to us, the tribunal should have sustained addition of only the sale value of the purchases covered by the five check post declarations."

(10) The Division Bench decision of this court is binding on us. Therefore, the order passed by the first appellate authority and the Tribunal in directing the assessing authority to confine the assessment to one time the probable omission and suppression requires to be deleted. Accordingly, we pass the following order:

ORDER

(i) The Revision Petition is partly allowed.

(ii) The assessing authority, now, shall issue a fresh demand notice to the petitioner/assessee, adding only the actual suppression noticed in the declaration forms, to the sales turnover declared by the assessee.

(iii) In view of the order passed in the revision petition, I.A.No.1951 of 2003 is dismissed.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(HARUN-UL-RASHID)
JUDGE

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